

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

SCHC, LLC,)	
)	
Plaintiff,)	Civil Action No.: 2:07-2918-CWH
)	
vs.)	
)	
F/V-Explorer, O.N. 295037 and FRP Hull Vessel)	ORDER
SC Registration SC-6639 AE, their engines, boilers,)	
tackle furniture, equipment, freights and apparel, <i>in</i>)	
<i>rem</i> , and Thomas H. Graham,)	
)	
Defendants.)	
_____)	

On August 23, 2007, the plaintiff brought this foreclosure action in admiralty, *in rem* and *in personam*, against the defendants, who have not made an appearance. In accordance with Supplemental Rule C(2) of the Federal Rules of Civil Procedure, the plaintiff filed a verified complaint asserting a claim for foreclosure of a maritime claim. In its verified complaint, the plaintiff identifies the subject property as the F/V Explorer and FRP Hull.

I. Plaintiff's Allegations

The plaintiff provided dockage and necessities to the defendant F/V Explorer from July 1, 2004, through September 19, 2007, at the request of Thomas H. Graham ("Graham"). According to the plaintiff, the reasonable value of this service is \$140.00 per month, but Graham made only one payment of \$140.00. Therefore, \$5,180.00 is owed to the plaintiff for the dockage of the F/V Explorer, and the plaintiff asserts that it has a \$5,180.00 lien against the vessel.

According to the plaintiff's verified complaint, on July 1, 2006, Graham docked the FRP

Hull at the plaintiff's docks without the plaintiff's permission. The plaintiff provided dockage and necessities with a reasonable value of \$140.00 per month until September 19, 2007. The plaintiff asserts that it has a \$1,960.00 lien with the highest priority against the vessel. The dockage fees and necessities provided to the two vessels total \$7,140.00.

II. Procedural History

On August 24, 2007, after reviewing the complaint and supporting affidavit of Mr. John R. Gamble, Jr., the Court authorized the issuance of a warrant for arrest *in rem* against the F/V Explorer and FRP Hull vessels. In addition, the Court appointed John R. Gamble, Jr. as substitute custodian of the defendant vessels.

The plaintiff served original process, the summonses, verified complaint, warrant, and other documents on Graham and on the Defendant vessels on September 19, 2007. Notice was given in the Post and Courier on September 29, 2007, and on September 30, 2007. No statement of interest in or right against the subject vessels has been filed in this action. Supplemental Rule C(6) provides that a person who asserts a right of possession or any ownership interest in the property must file a verified statement of right or interest within 10 days after execution of process.

On November 5, 2007, the Court ordered that the vessel be sold. Supplemental Rule E(9)(b) permits the Court to order the sale of an arrested vessel prior to disposition of the case on the merits upon a showing that the vessel is perishable, liable to deterioration, decay, or injury by being detained in custody, or that the expense of keeping the property is excessive or disproportionate. Courts have held that such a sale is appropriate where the owner of a vessel arrested in a ship mortgage foreclosure proceeding fails to post security to obtain the vessel. *See*

Pee Dee State Bank v. F/V Wild Turkey, 1991 WL 355221 *4 (D.S.C. 1991). After giving notice in the Post and Courier on November 10, 2007, and on November 11, 2007, the US Marshals sold the FRP Hull at a public auction for \$1.00 to Nicholas Dubose, 1240 Camelia Road, Charleston, SC 29407, and the F/V EXPLORER at a public auction to the Plaintiff for a credit bid of \$1.00. No objection has been made to the sale of the vessels. On November 21, 2007, an Order Confirming Sale was entered.

III. Plaintiff's Request for Deficiency

On April 11, 2008, the plaintiff requested the Court to enter a deficiency judgment against Thomas H. Graham, who has not appeared in this action. The record shows that the Plaintiff has incurred the following expenses:

1. *Custodia Legis* Expenses: \$18,142.39

- \$4,654.38- United States Marshals Service
for seizure, insurance, and fees and commissions for sale of vessels
- \$4,025.79- Substitute Custodian
for monitoring and safe keeping of the vessels
- \$7,733.02
for dockage and storage during the arrest
- \$1,425.00
for towage of the F/V EXPLORER from Shem Creek to Ross Marine; and
- \$304.20
for advertising pertaining to the arrest and to the sale.

2. Court Costs and Expenses: \$350.00

The plaintiff paid a \$350.00 fee to the Clerk of Court for the filing of this action.

3. Dockage expenses: \$7,140.00 dockage

All of the plaintiff's expenses come to \$25,632.39.

On June 3, 2008, the Court held an evidentiary hearing, in which it questioned whether \$1.00 was the reasonable value for the F/V Explorer and FRP Hull. At that hearing, Mr. Philip

Smith testified that he is one of the principals of the plaintiff and that he paid to dispose of the F/V Explorer after it sank due to its deteriorated condition.

On June 10, 2008, the plaintiff filed the affidavit of Whitney Dubose, purchaser of the FRP Hull. Whitney DuBose avers that he considered the FRP Hull to have a value of \$1,500.00 when he purchased the vessel. Since the sale, he has spent approximately \$2,000.00 on improvements and considers the FRP Hull to be worth approximately \$4,500.00 to \$5,000.00. The plaintiff wishes to reduce its requested deficiency judgment by \$3,001.00 to account for the purchase price and reasonable value of the FRP Hull.

Judgment shall be entered in favor of Plaintiff and against F/V Explorer in the amount of \$1.00, which judgment has been satisfied by the Marshal's Bill of Sale transferring title to F/V Explorer to Plaintiff. Judgment shall be entered in favor of Plaintiff and against the FRP Hull Vessel SC Registration SC-6639-AE *in rem* in the amount of \$1.00. The United States Marshals Service shall forthwith disburse the \$1.00 sales proceeds from sale of the FRP Hull SC Registration SC-6639-AE to:

SCHC, LLC
465 West Coleman Blvd., Suite 302
Mt. Pleasant, SC 29464

Judgment shall be entered in favor of Plaintiff SCHC, LLC and against Defendant Thomas H. Graham in the amount of \$22,631.39, plus prejudgment interest calculated on the dockage. The interest rate shall be based upon the weekly average one-year Treasury constant maturities rate in effect on July 1 of each year.

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "C. Weston Houck". The signature is written in a cursive, flowing style. The "C" is large and loops around the first part of the name. The "Houck" is written with a prominent "H" and a trailing flourish.

**C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE**

June 11, 2008
Charleston, South Carolina